

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of Essex Acquisition  
Corporation for Authority to Acquire Certain  
Assets of NOW Communications, Inc. (U-6179-C)  
and Request for Expanded Authority.

Application 03-07-033  
(Filed July 2, 2003)

**O P I N I O N****1. Summary**

Essex Acquisition Corporation (EAC) seeks Commission authority to acquire the California assets of NOW Communications, Inc., doing business as NOW Communications of Mississippi, Inc. (NOW). NOW has filed for reorganization in the U.S. Bankruptcy Court for the Southern District of Mississippi, and the transfer is part of an asset purchase agreement by which EAC would acquire certain assets of NOW and its subsidiaries. The application is unopposed and is granted.

**2. Parties to the Transaction**

NOW is a Mississippi corporation with its principal place of business in Jackson, Mississippi. NOW and its subsidiaries provide resold and facilities-based telecommunications services in 48 states, including California, and the District of Columbia. NOW received authority to operate as a competitive local carrier in California in Decision (D.) 99-07-038. It received authority to operate as an interexchange carrier in D.99-06-070. NOW also holds authority to provide

international telecommunications services as a non-dominant common carrier pursuant to authority of the Federal Communications Commission (FCC), and it provides interstate telecommunications services pursuant to FCC blanket authority available to non-dominant interexchange providers.

EAC is a Delaware corporation with its principal place of business in Boca Raton, Florida. EAC is a wholly owned subsidiary of BiznessOnline.com, Inc., doing business as VeraNet Solutions (Biz). EAC and its affiliates hold authority to provide resold and facilities-based telecommunications services in 10 states. EAC provides resold and facilities-based telecommunications services in eight states, and affiliates of EAC provide resold and facilities-based telecommunication services in two states.

### **3. Proposed Transaction**

EAC proposes to acquire certain assets of NOW and its operating subsidiaries in connection with a reorganization of NOW currently being overseen by the Bankruptcy Court. With the approval of the Bankruptcy Court, EAC and MCG Capital Corporation (MCG) will execute an asset purchase agreement under which EAC will acquire assets of NOW as the assignee of MCG. Among other things, EAC proposes to acquire all assets associated with NOW's telecommunications operations in California, including but not limited to NOW's customer base, its Certificate of Public Convenience and Necessity (CPCN) and its applicable tariffs. A copy of the asset purchase agreement is attached to the application as Exhibit B.

EAC states that it will be filing with the FCC to use the FCC's streamlined procedures for the acquisition of another telecommunications carrier's subscriber base. A draft of the customer notification required by the FCC's rules is attached to the application as Exhibit C.

EAC states that the proposed acquisition of NOW's assets will enable it to begin operations in a cost-efficient manner, thereby enhancing its competitive position and ability to provide an array of services to consumers in California. Although the proposed acquisition will result in a transfer of substantially all of NOW's assets, EAC states that the agreement will not involve a change in the manner in which current customers will receive telecommunications services. EAC will adopt the terms and conditions of NOW's tariffs, and rates, terms and conditions of EAC's services will be identical to those of NOW. EAC states that it will notify customers of this transaction and of the change in carrier upon Commission approval and prior to consummation of the transaction.

#### **4. Public Interest Considerations**

The parties state that NOW customers will realize significant public interest benefits from EAC's acquisition of the CPCN and assets of NOW, including NOW's customer base. According to the application, NOW serves a largely low-income residential customer base that essentially has poor credit. Many of these customers pay cash in advance for monthly local dial tone telephone service. Applicants state that few carriers have an interest in providing service in such a manner, especially to customers located in the most rural areas of the state. According to the application, many customers receiving service had not had telephone service for months or years prior to receiving service from NOW. Applicants state that the local dial tone telephone service provides customers with access to 911 emergency services that otherwise would not be easily available to many of these customers.

#### **5. Discussion**

Pub. Util. Code § 854 requires Commission authorization before a company may "merge, acquire, or control...any public utility organized and

doing business in this state....” The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (*San Jose Water Co.* (1916) 10 CRC 56.)

In a situation where a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, we apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Since NOW possesses a CPCN to operate as a limited facilities-based and resale provider of local exchange and interexchange telecommunications services within California, we will apply the requirements for such authority to EAC.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant that desires to operate as a facilities-based and resale provider of local exchange and interexchange service must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent, reasonably liquid and readily available to meet start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

EAC has provided financial statements that demonstrate that it has sufficient resources to meet our financial requirements. EAC also has provided background information on its principals and directors, noting that they already oversee telecommunications services similar to those operated by NOW. This information satisfies our requirement for a showing of technical expertise.

The transaction will improve the acquired company's access to capital. In addition, the transfer of control will be transparent to customers. Therefore, the proposed transaction is not adverse to the public interest.

As discussed above, EAC has satisfied our financial and experience requirements, and the proposed transaction is not adverse to the public interest. Therefore, we will grant the application. We authorize transfer of the licenses currently held by NOW (U-6179-C and IER/IEC/CLC 6179) to EAC.

#### **6. Uncontested Matter**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

#### **7. Categorization and Need for Hearings**

The Commission has preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

#### **8. Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. By D.99-07-038, NOW was granted a CPCN to operate in California as a limited facilities-based and resale provider of local exchange services.
2. By D.99-06-070, NOW was granted a CPCN to resell interexchange services.
3. As a result of the proposed transaction, EAC will acquire the California telecommunications assets of NOW.
4. Customers will continue to receive service under the same rates, terms and conditions after the transaction.

5. EAC has sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold local exchange and interexchange services.

6. EAC possesses the necessary technical expertise required by the Commission.

7. Notice of this application appeared on the Commission's Daily Calendar on July 25, 2003.

8. There were no protests to this application.

9. No hearings are necessary.

### **Conclusions of Law**

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a facilities-based and resale provider of local exchange and interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. EAC meets the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and interexchange telecommunications services.

3. The transaction is not adverse to the public interest.

4. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

## **O R D E R**

### **IT IS ORDERED** that:

1. The joint application of Essex Acquisition Corporation (EAC) and NOW Communications, Inc. (U-6179-C) (NOW) for EAC to acquire certain California

assets of NOW, including but not limited to NOW's Certificates of Public Convenience and Necessity, subscriber base and tariffs, is approved.

2. NOW is authorized to transfer its California licenses (U-6179-C and IER/IEC/CLC 6179) to EAC.

3. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as authorized herein, within 10 days of the date of consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.

4. Applicants shall make all books and records applicable to the transfer available for review and inspection upon Commission staff request.

5. The authority granted herein shall expire if not exercised within one year of the date of this order.

6. Applicants shall notify customers of the change of carrier control prior to consummation of the transaction and shall cause applicable tariffs to reflect the change in control.

7. Application 03-07-033 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.